

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

BBC GROUP NV LLC, a Nevada Limited Liability Company

Plaintiff/Counterclaim Defendants,

vs.

ISLAND LIFE RESTAURANT GROUP LLC,
a Washington Limited Liability Company;
ALEX PRINDLE, a Washington Resident
BRIAN O'CONNOR, a Washington Resident

Defendants/Counterclaim Plaintiffs.

Case No.: 2:18-cv-1011-RSM

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANTS'
MOTION TO COMPEL DISCOVERY
RESPONSES**

HEARING NOTICED ON APRIL 19, 2019

I. INTRODUCTION

COMES NOW, the Plaintiff BBC GROUP NV LLC ("BBC") by and through their attorney of record, and submits this Response in opposition to Defendant's Island Life et al. ("Island Life") Motion to Compel. Defendant's Motion to Compel was hastily filed roughly 12 hours, of which very few elapsed during business hours, after hundreds of pages of documents were supplementally produced by BBC late on the date April 3, 2019, as agreed upon by the parties in the March 25, 2019 discovery conference. Rosenberg Declaration at ¶ 29. Notwithstanding BBC's good submission of numerous supplemental documents within the

1 agreed time frame, Island Life nonetheless elected to file this motion to compel to apparently
2 serve as a vehicle for continuing its baseless attacks against BBC, such as propounded in the
3 motion and supplemental briefings regarding need for a bond as security for the partial
4 preliminary injunction, as ordered by the court [Docket 35 and 38].

5 It is Island Life's baseless Motion to Compel directly following plaintiff's cooperation in
6 timely production of documents soon after the stipulated protective order (SPO) was put in place
7 - a contingency for protecting the respective valuable trade secret and sensitive financial
8 information of both parties – that diverts time and attention and thus impedes discovery requisite
9 to ascertaining the merits of the present suit.-. Until completing the SPO filing, confidentiality
10 issues prevented the parties from exchange of many documents potentially probative of the
11 merits. Following the SPO filing on March 27, 2019 [Docket 33], Plaintiff in the supplemental
12 production served on April 3, 2019, the day before this motion was filed, produced substantially
13 more documents than the Defendants. In contrast, Defendants' RFP responses have not been
14 supplemented. Defendants' responses remain woefully inadequate notwithstanding Plaintiff's
15 request to supplement detailed in the letter dated April 10 and emailed on April 11, 2019
16 following on emails requesting Island Life's insurance policy disclosed in the Rule 26(a)
17 disclosure. Exhibits 1 and 2. Supplemental information properly provided once an SPO was in
18 place remains unfulfilled to date. See Exhibit 5.

19 Moreover, the documents Defendants' produced are for the most part tangentially
20 responsive and contain redundancies thereby, fall far short of full and proper responses. BBC
21 has specified at least some of the deficiencies in Defendants' response and is working towards a
22 meet and confer regarding Defendants' unresponsive production. Exhibit 1. Hence, Defendants
23 now come to the Court asking that BBC be compelled to provide documents which either 1) they
24 themselves have refused to provide, or 2) do not exist.

1 its responses on April 03, 2019, BBC has to date produced more documents than Island Life
2 despite having propounded roughly eight times BBC's 90 RFP's as compared to Island Life's 11
3 Exhibit 3. For months, Island Life has failed to supplement its own woefully inadequate
4 responses and worse continues to withhold information regarding Island Life's insurance
5 coverage and any reservations of rights that may exist. Further still, thus far in this suit, lapses in
6 communication between the parties have not been uncommon. As Island Life's Counsel points
7 out in his declaration, only 9 emails were exchanged from the beginning of December to the end
8 of February, most of those emails regarding a draft of the stipulated protective order and not
9 deficiencies in discovery.

10 Once the parties began discussing discovery deficiencies in earnest starting in March,
11 BBC's's Lead Counsel Nihat Deniz Bayramoglu was largely away from the office the during
12 March due to the rapid decline in health and later passing of his grandmother. Exhibit 4. To the
13 extent there is a delay, the delay is a result of the personal loss and circumstances besetting
14 Plaintiff's counsel and the reluctance of both parties to produce confidential and sensitive
15 documents prior to the filing of an SPO.

16 17 III. ARGUMENT

18 **A. Plaintiff has provided hundreds of pages of discovery and has supplemented its** 19 **discovery responsive as of April 3, 2019 (before the filing of Defendants' motion)** 20 **or alternatively Defendants are seeking documents that do not exist yet.**

21 Defendants seem to take issue with Plaintiff's responses to Interrogatories 3 and 6 as well
22 as Requests for Production 2, 5, 9, and 11. Plaintiff generally categorizes Defendants' RFP's and
23 ROG's below:

- 24 i) Damages (ROG 3 and RFP 5);
25

- 1 ii) Creation of the marks (ROG 6, RFP 9);
- 2 iii) Expansion plans (RFP 2); and
- 3 iv) Communication with Guang-Yang Li and/or his attorneys (ROG 11).

4 Regarding the response to ROG 3 and RFP 5 (Damages), Plaintiff and Plaintiff's Counsel
5 has explained in written discovery responses and during the discovery conference that the final
6 calculation of damages has not yet been completed, largely because BBC anticipates hiring a
7 damages expert to review the documents and operations of the Defendants.

8 Despite Plaintiff's specific discovery requests, to date Defendants have not produced any
9 documents related to the finances and operations of the Defendants or any licensees, both of
10 which are a necessary part of a damages calculation. In other words, Plaintiff has already clearly
11 set forth that it seeks damages in the form of Actual damages, Statutory damages, attorney's fees,
12 costs, and interest, but as a practical matter the damages calculation *cannot* be completed until
13 the Defendants provide their own responses to Plaintiff's discovery requests. Defendants are
14 seeking a document which does not exist. Assuming cooperation from **Defendants** in producing
15 documents in response to Plaintiff's discovery requests, calculating damages will entail an expert
16 opinion and provide a further response. As soon as practicable after any such damages
17 calculations are created, they will be produced via supplementation.

18 Regarding (ROG 6, RFP 9) Plaintiff and Plaintiff's Counsel has similarly explained in
19 discovery responses and during the discovery conference that no documents exist as to creation
20 of the marks. Specifically BBC in its response to RFP 9 stated "...BBC does not believe that any
21 documents currently exist response to this Request." and in response to ROG 6 BBC replied that
22 the creation and selection of Bok Bok occurred in 2012 and no documents exist regarding this
23 conversation. BBC further responded that the Bok a Bok and BocBoc chicken delicious marks
24 were discussed in early 2018 by and between Plaintiff's counsel and others in Plaintiff's
25 organization, however no such documents exist reflecting this conversation. To the extent the

1 specifics as to the selection of the mark(s) in their present form is requested, those documents
2 were produced in response to RFP 4, which appears to have been satisfactory to Defendants as
3 RFP 4 is not raised as an issue of the present motion.

4 Regarding RFP 2 (Expansion Plans) Plaintiff's Counsel has been working with Plaintiff
5 to produce documents regarding expansions. The corollary ROG 2 states that the eventual plan
6 is to have twelve locations in San Francisco, six locations in Los Angeles and four locations in
7 Seattle. Seattle plans cannot proceed since the issuance of the preliminary injunction. BBC's
8 expansion model (discussed at length in BBC's supplemental briefing regarding the posting of a
9 bond for the preliminary injunction [Docket 35] is such that until the expansion plans take root
10 fully there is not much of a paper trail. However, to say that no documents regarding expansion
11 have been produced is disingenuous as the expansion plans are referenced and discussed in at
12 least the long form business plan that was produced in the supplemental production. It is highly
13 unlikely that between when the documents were produced and when Defendants filed this motion
14 to compel roughly 12 hours later that Defendant or Defendants' counsel had an opportunity to
15 review the supplemental production in its entirety. Additionally, there are currently a number of
16 documents relating to expansion that Plaintiff is working on compiling for the Defendants as it
17 relates specifically to expansion plans that have already taken root: i.e., the Los Angeles
18 expansion. As discussions regarding new cites are formalized and agreements are memorialized
19 in written form, Plaintiff has every intention of supplementing its responses and providing further
20 responsive documents as they become available. Plaintiff has no intention of withholding such
21 documents.

22 Regarding RFP 11 (discussions with Guang-Yang Li and/or his attorneys) Plaintiff has
23 already produced all correspondence with Guang-Yang Li and his attorneys. Plaintiff and Guang-
24 yang Li have never been in direct talks, the conversations have only ever been through their
25 respective attorneys Nihat Deniz Bayramoglu and Humayyun Siddiqi. The majority of the

1 conversation and negotiations that took place occurred via phone calls in early 2018. However
2 every single email exchanged between Nihat Deniz Bayramoglu and Humayyun Siddiqi have
3 been produced. Defendants' counsel in its motion to compel erroneously states that only one
4 email exchange has been produced. In fact, four email chains and their attachments were
5 produced in ".eml" format. Indeed, one of the four email chains was marked as confidential but
6 Defendant's counsel states that only one chain was produced, an error likely resulting from
7 hastily reviewing Plaintiff's supplemental documents without careful consideration of the
8 responses prior to filing this unnecessary Motion to Compel. Plaintiff and Plaintiff's Counsel is
9 unaware of any deficiencies in the production in response to RFP 11. Defendants' claims and
10 statements that "BBC has failed to provide any documents in response to Request for Production
11 ...11" [Docket 36, pg. 7] is simply untrue and again likely an oversight from rushing to file its
12 motion before fully reviewing the supplemental production provided by Plaintiff.

13 **B. Plaintiff BBC is not evading or resisting discovery, but is actively working with**
14 **Defendants to produce documents; Sanctions to the extent they are appropriate**
15 **should be against Defendants and in favor of Plaintiff BBC.**

16 As discussed above, Plaintiff BBC has been working with Defendants to produce
17 additional documents responsive to discovery, including the supplemental production on April
18 03, 2019. Defendants are the ones that are being uncooperative. Defendants choose not to
19 produce any substantive documents of their own and instead have filed an unnecessary motion
20 to compel without fully reviewing the supplemental discovery provided by BBC. The few issues
21 remaining on the part of BBC pale in comparison to the number of RFP's that the Defendants
22 have simply chosen not to provide any documents for. For reasons similar to those stated in
23 Defendants' Motion to Compel, Defendants have similarly failed to produce any documents for
24 a vast majority of the discovery requests propounded by BBC. In other words, Defendants appear
25

1 to ask this Court to compel production of documents as to which Defendants have been unwilling
2 to produce thus far. In contrast to Defendants persistent withholding of such documents, BBC
3 has in its April 03, 2019 supplementation provided such substantive documents.

4 The court has broad discretion in administering sanctions as they pertain to discovery. To
5 the extent that sanctions are deemed warranted, sanctions should be awarded to Plaintiff BBC
6 and against Defendants. Defendants have prepared and filed a motion to compel within 12 hours
7 of a supplemental response with hundreds of pages of discovery produced. Rather than digesting
8 what was produced and further discussing any deficiencies they may feel were inadequate;
9 Defendants instead chose to come to the Court and file the unnecessary if not frivolous motion
10 to compel the opposition to which imposes expenditures and time by BBC. BBC is a willing and
11 cooperative participant in the discovery process. Rather than continue the unreasonable and
12 wasteful resort to court intervention in the process, BBC beseeches Defendants to supplement
13 their woefully inadequate discovery responses instead. As such, BBC requests that the
14 Defendants be ordered to pay compensation for the fees and costs to prepare this opposition to
15 Defendants unnecessary Motion to Compel.

16 17 IV. CONCLUSION

18 For the reasons set forth herein, the Defendants' motion to compel should be denied and
19 BBC respectfully requests the Court to order Defendants to:

- 20
- 21 1) fully review the supplemental documents provided by BBC on April 3, 2019 and
22 bring any concerns they have through a meet and confer with Plaintiff's Counsel.
 - 23 2) BBC requests that Defendants be ordered to pay for the costs of defending against
24 this motion, which should not have been necessary.
- 25

3) properly respond to and produce documents responsive to BBC's discovery requests before seeking any additional intervention by the Court in discovery matters.

Dated this 15th day of April, 2019,

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the United States, that, on April 15, 2019, I electronically filed the preceding document with the Clerk of the Court via CM/ECF system, which will notify by email delivery of such document to the following attorneys representing the parties, as listed below:

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DATED this 15th day of April, 2019.

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